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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
MPT-003

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Appln. No 10/022,325	Filed 12/14/2001
First Named Inventor Bradley Taylor	
Art Unit 2141	Examiner Kenneth R. Coulter

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

Signature: Jeanette S. Harms

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number: 35537

Telephone number: 408-451-5907

☐ attorney or agent acting under 37 CFR 1.34.

Date January 28, 2008

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bradley Taylor

Assignee: Mirapoint, Inc.

Title: Fast Path Message Transfer Agent

Serial No.: 10/022,325 File Date: December 14, 2001

Examiner: Kenneth R. Coulter Art Unit: 2141

Docket No.: MPT-003

Date: January 28, 2008

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Commissioner for Patents
P.O. Box 1450
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

The Examiner's rejection of Claims 1-6, 11-16, and 25-27 is in clear error. Claims 1-6, 11-16, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,978,452 (Cho) or alternatively by U.S. Patent 5,974,414 (Stanczak). Claims 7-10 and 17-20 are objected to as being dependent on rejected base claims.

REMARKS

This Pre-Appeal Brief is filed in response to the Final Office Action dated October 31, 2007, which has a shortened statutory period set to January 31, 2008.

Claims 1-6, 11-16, And 25-27 Are Patentable Over U.S. Patent 5,978,452 (Cho) or U.S. Patent 5,974,414 (Stanczak)

Claim 1 recites in part:

> determining whether a number of bytes of the message exceeds a predetermined threshold of bytes set for a message, wherein if not, then writing the message only to a

memory, and wherein if so, then writing the message to the memory and a non-volatile storage.

Claim 11 recites in part:

computer readable code that determines if a number of bytes of the message exceeds a predetermined threshold of bytes set for a message, wherein if not, then writing the message only to a memory, and wherein if so, then writing the message to the memory and a non-volatile storage.

Claim 25 recites in part:

determining whether a number of bytes of the message exceeds a predetermined threshold of bytes set for a message, wherein if not, then writing the message only to a memory, and wherein if so, then writing the message only to non-volatile storage.

Cho fails to disclose or suggest these limitations. Cho teaches a facsimile system that allows the recording of incoming voice messages even if the incoming voice messages exceed the capacity of a storage medium. Col. 2, lines 60-64. Specifically, Cho teaches that an overflow of voice messages can be sent from a voice message memory 130 to an auxiliary memory such as a hard disk of the PC 138 for storage. Col. 4, lines 35-49. Notably, Cho teaches that a plurality of callers' voice messages are first stored in voice message memory 130 before sending the overflow to an auxiliary memory. Col. 4, lines 35-49. Thus, if the maximum storage limit of the voice message memory 130 is reached, then Cho teaches using the hard disk of PC 138. In summary, Cho teaches a system that determines whether a capacity of a memory is exceeded and if so, then storing any overflow in an auxiliary memory.

The Examiner considers the example of a single, lengthy voice message that exceeds the capacity of voice message memory 130, i.e. the predetermined threshold of bytes for a message equals the bytes in memory 130. Applicant submits that Cho

implicitly teaches away from such a threshold. That is, if Cho uses a threshold of bytes for a message equal to the capacity of voice message memory 130, then Cho will fail to indicate an overflow condition unless that message exceeds the bytes in memory 130. Because Cho envisions that the bytes of a message are significantly less than that for voice message memory 130 (otherwise, a plurality of messages could not be stored by voice message memory 130), the Examiner's suggested setting of the threshold effectively destroys the utility of Cho's system.

In conventional email systems, messages are constantly being stored and accessed on a non-volatile storage device, thereby undesirably increasing email delivery time. Specification [0004-0007]. In the recited fast path message transfer agent, Applicant can advantageously decrease email delivery time by determining whether the bytes in a message exceed a predetermined threshold of bytes set for a message. If the message has less bytes than the threshold, then the message is stored only in memory. If the message exceeds the threshold, then the message is written to both the memory and a non-volatile storage.

As known by those skilled in the art of email servers, the number of bytes in a typical message is extremely small compared to the capacity of a typical memory. Thus, a memory capacity is significantly different than the recited predetermined threshold of bytes for a message. Applicant submits that a memory capacity does not disclose or suggest a predetermined threshold of bytes set for a message.

Moreover, Applicant notes that if the maximum storage limit of the voice message memory 130 is reached based on receipt of a message, then Cho does not teach writing that message to both memory and a non-volatile storage, as recited in Claims 1 and 11.

Based on the above reasons with respect to Cho, Applicant requests reconsideration and withdrawal of the rejection of Claims 1, 11, and 25.

Stanczak also fails to disclose or suggest the above-quoted limitations of Claims 1, 11, and 25. The Office Action cites the Abstract, FIGS. 4 and 5, col. 5, lines 13-24, and col. 8, lines 17-26, and 46-65 as teaching these limitations.

The Abstract teaches that digitally-encoded messages (DEMs) can be routed via public-switched telephone networks, wide area networks, and local area networks to the most desired route. FIGS. 4 and 5 are schematics of automated message distribution (AMD) systems. Col. 3, lines 43-44, 48-50. A digital message queue (DMQ) 415 of this AMD system includes a high-priority queue 420 and a low-priority queue 422. Col. 5, lines 13-24. Col. 8, lines 17-26 teach that three queue depth thresholds are preferably set. The thresholds correspond to the number of digitally-encoded messages (DEMs) that are stored in the DMQ 415. For example, as taught in col. 8, lines 46-65, if the number of DEMs in the DMQ 415 reaches a warning threshold, a message indicative of this condition is written to a system log file and/or printed on a system printer. The message indicates that the DEM traffic is sufficient to cause a backlog of DEMs. On the other hand, if the number of DEMs reaches a second threshold, then the eligible user list is augmented by adding secondary users for the DMQ 415 to handle the overflow of DEMs in the DMQ 415. Yet further, if the number of DEMs stored in the DMQ 415 reaches the third, overflow threshold, then a message indicative of this condition is written to a system log file. An overflow condition indicates that the number of DEMs entering the AMD system 400 is too great to be handled by the primary and secondary users currently assigned to process the incoming messages. Applicant submits that neither the DMQ nor

the AMD system teaches anything about determining whether a number of bytes of the message exceed a predetermined threshold of bytes set for a message, much less writing the message only to memory or to memory and non-volatile storage or only to non-volatile storage based on the step of determining.

Based on the above reasons with respect to Stanczak, Applicant requests reconsideration and withdrawal of the rejection of Claims 1, 11, and 25.

Claims 2-6 depend from Claim 1 and therefore are patentable for at least the reasons presented for Claim 1. Claims 12-16 depend from Claim 11 and therefore are patentable for at least the reasons presented for Claim 11. Claims 26-27 depend from Claim 25 and therefore are patentable for at least the reasons presented for Claim 25. Therefore, Applicant requests reconsideration and withdrawal of the rejection of Claims 2-6, 12-16, and 26-27.

CONCLUSION

Claims 1-20 and 25-27 are pending in the present application. Allowance of these claims is respectfully requested.

Respectfully submitted,

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